No. 94-1731

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

JOHN G. ROWLAND, *et al.*,

Petitioners,

—v.—

JUAN F., BY AND THROUGH
HIS NEXT FRIENDS, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF *CERTIORARI* TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did the Second Circuit follow the applicable rulings of *Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561 (1984), and *Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367 (1992), in affirming the broad equitable power of the district court to enforce the Consent Decree it had been supervising for over four years?

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COUNTERSTATEMENT OF THE CASE

The children who are plaintiffs in the district court and respondents to this petition filed their lawsuit to challenge Connecticut's failure to protect its most vulnerable citizens -- the thousands of abused and neglected children dependent on the state's foster care system for care and protection. A 120-page "comprehensive, multi-faceted" Consent Decree was approved by the district court on January 7, 1991. Petitioners' Appendix 4-A.[1]

The Consent Decree required the development of manuals for each of its sections. Twelve manuals, containing both substantive provisions as well as timetables, were stipulated to by the parties and incorporated as part of the Consent Decree by the district court on September 1, 1992. Pet. App. 4-A.

Because of its complexities, and the importance of implementation, the Decree provided for continuing jurisdiction by the district court to ensure compliance. A subsequent detailed Monitoring Order was also issued by the district court on December 1, 1992, placing monitoring and a dispute resolution process in the hands of a court-appointed neutral monitor. Pet. App. 5-A. An essential provision of this Order, ignored by petitioners in their statement of the case, authorized intervention by the Monitor and the court not only on issues of noncompliance, but also on issues of *anticipated* noncompliance. Pet. App. 6-A.

The provisions of the Decree and Manuals relating to caseload reduction were one of the key linchpins of the Decree and imposed upon petitioners explicit caseload/staffing ratios and deadlines by which such ratios were to be reached. Pet. App. 4-A, 8-A. With the knowledge she had

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[1] Petitioners' Appendix, hereinafter referred to as "Pet. App."

a court-ordered date of July 1, 1994 to achieve full compliance on these issues, petitioner Commissioner of the Department of Children and Families (DCF) developed budget requests to hire 145 social workers, 29 social work supervisors, 29 senior clerks, 8 program supervisors, 2 program directors, and 29 case aides by July 1, 1993, and an equal number of each category by January 1, 1994. Pet. App. 8-A.[2] These requests were submitted to the legislature and the Court Monitor as the agency's formal plan for necessary staffing to meet court-mandated requirements. Pet. App. 8-A.

Despite the knowledge that any reductions would force DCF to be out of compliance with federal court orders, the Governor approved DCF's budget from which the Connecticut legislature had slashed millions of dollars for staffing positions. Indeed, the budget, as eventually signed by the Governor, contained 173 *fewer* social workers and 133 *fewer* social work supervisory and support staff than was required for compliance of the Decree and manuals. Appendix 7a.[3]

In order to protect their rights, respondents invoked the dispute resolution process provided in ¶IV.B of the Monitoring Order, Pet. App. 6-A, alleging that the budget cuts would place DCF in noncompliance of the Decree.[4] Pursuant to his explicit authority under the Monitoring Order, the

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[2] Because of the comprehensiveness and time requirements of training and the restriction on new trainees from carrying a full caseload immediately, the hiring needed to occur well in advance of the July 1, 1994 deadline. Pet. App. 11-A.

[3] Appendix attached hereto, and hereinafter referred to as "App."

[4] Petitioners have now abandoned their appeal of claims relating to increased foster care payments, and nurse practitioner staffing, which were part of the original orders.

Monitor held extensive hearings over a three-day period during which petitioners made a significant concession -- the budget cuts would force them unequivocally into a position of noncompliance. Pet. App. 7-A. While they claimed that a "revised hiring plan" would place them in "substantial" compliance, the Monitor rejected their factual assertions, explicitly ruling that the plan did "not achieve full compliance *or* a level of staffing that could be described as 'substantial compliance.'" Pet. App. 7-A[5] (emphasis added). On June 15, 1993, the Court Monitor issued recommendations to the district court that it order the hiring plan initially put forth by DCF in order to prevent "clear and present danger of irreparable harm" to respondents. Pet. App. 32-A.

At a subsequent court hearing on June 25, 1993, the full transcript of testimony and argument, as well as the documentary evidence from the hearings before the Monitor, were presented to the district court. The district court, after considering this evidence and hearing argument from the Monitor and the parties, adopted the Monitor's findings of fact and recommendations with minor modifications.[6]

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[5] The Court Monitor "disregarded" their "revised" plan, Pet. Br. p.4, precisely because it still left DCF with *58* fewer social workers and *133* fewer social work support staff than were needed to meet the July 1, 1994 caseload mandates. App. 5a, 7a. He also found that adequate funding of this plan was "questionable" and did not "address the continuation of any positions established in this *ad hoc* manner since they [were] not presently included in the SFY 94-95 budget." App. 5a. Furthermore, he recognized the numbers in this alleged "revised plan" were significantly less than the petitioners had represented they needed only a few weeks earlier. App. 5a, 6a.

[6] The court changed the number of program supervisors required to "eight" by July 1, 1993 and "eight" by January 1, 1994. Pet. App. 24-A.

REASONS FOR DENYING THE WRIT

This case presents no conflict with the rulings of this Court or of other courts of appeals as to the proper construction or modification of institutional reform consent decrees. The Second Circuit Court of Appeals correctly concluded that the district court's specific order detailing what additional steps petitioners had to take to come into compliance with certain staffing requirements in the consent decree and manuals was not a modification, but rather a permissible enforcement of the express terms of the parties' agreement in accordance with *Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561 (1984). Even if the district court's clarification can be construed as a modification, the court of appeals correctly applied the proper standard of modification in conformity with this Court's ruling in *Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367 (1992), and other applicable precedents. Respondents therefore respectfully urge this Court to deny the petition for a writ of *certiorari*.

I. THERE IS NO CONFLICT AMONG THE CIRCUITS AS TO THE PROPER STANDARD FOR CONSTRUING CONSENT DECREES

The legal issue in this case can be simply stated. Petitioners voluntarily entered into a consent decree under which they agreed to meet certain caseload and staffing ratios by July 1, 1994. The consent decree further provided that the district court could resolve issues of anticipated noncompliance before they matured into full-scale problems that jeopardized the essential purposes of the decree. Pursuant to this authority, the district court ordered petitioners to hire, in advance of the July 1st deadline, a designated number of child care workers that the state itself had determined would be necessary to ensure compliance with its staffing obligations.

Petitioners challenge that order as an inappropriate exercise of judicial authority. As the Second Circuit correctly held, however, the challenged order did not enlarge or modify the terms of the consent decree. It merely implemented a provision of the agreement that the state had previously accepted and now sought to disavow. The district court's implementation order was well within its equitable discretion and the Second Circuit's affirmance of that order was entirely consistent with this Court's applicable precedents and the prevailing law in other circuits. Accordingly, review by this Court is neither necessary nor warranted.

A. The Second Circuit's Decision Is Consistent With This Court's Ruling In *Stotts* And The Approach Followed By Other Courts Of Appeals

Petitioners' assertion that a conflict exists between the Second Circuit's decision below and this Court's ruling in *Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561, is based on a fundamental misreading of the Second Circuit's ruling. By suggesting that the court went beyond the four corners of the parties' agreement and adopted an overly broad standard for implementing the decree, petitioners confuse the court's distinction between the proper inquiry for *construing* a consent decree and the scope of a court's authority to insure *implementation* of a decree. While consent decrees should be "'*construed* basically as contracts'" with reference only to its express terms, courts are not confined within the four corners of the parties' agreement in "'*implementing* the *purposes* of the decree.'" *Juan F. by and through Lynch v. Weicker*, Pet. App. 10-A (quoting *United States v. ITT Continental Baking Co.*, 420 U.S. 223, 236-37 (1975))(emphasis added).

This language is entirely in accord with this Court's ruling in *Stotts*. Applying the "four corners" rule of construc-

tion developed in *United States v. Armour & Co.*, 402 U.S. 673, 681-82 (1971), this Court in *Stotts* concluded that the injunction of the fire department's seniority policy could not be considered a permissible enforcement of the terms of the parties' agreement because: (1) there were no express layoff provisions within the four corners of the consent decree, and (2) the injunction involved a qualitatively different remedy which required a consideration of other factors which were not dealt with in the original consent decree. 467 U.S. at 574-75.

Here, by contrast, the district court's order implemented a series of caseload and staffing ratios that were expressly included within the four corners of the consent decree. Unlike *Stotts*, therefore, this case does not involve a district court order addressing issues that the parties themselves had never contemplated. Indeed, precisely the opposite is true. The challenged order in this case did not alter the basic agreement between the parties; it simply ensured that the agreement was honored.

Moreover, the Second Circuit's decision comports with its prior rulings,[7] as well as established precedents in other circuits. Despite petitioners' attempt to create a false conflict among the circuits by summarily referring to *Lorain NAACP v. Lorain Board of Education*, 979 F.2d 1141 (6th Cir. 1992), *cert. denied*, __ U.S. __, 113 S.Ct. 2998 (1993); *Halderman v. Pennhurst State School and Hospital*, 901 F. 2d 311 (3d Cir.), *cert. denied*, 498 U.S. 850 (1990); and

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[7] While petitioners cite the Second Circuit's decision in *Crumpton v. Bridgeport Education Association*, 993 F.2d 1023 (2d Cir. 1993), as also conflicting with its decision in *Juan F.*, that decision provides no independent support for petitioners' argument. Applying the contract theory of construction, the court determined that, in the absence of a specific layoff provision, a preferential layoff plan was not within the four corners of the parties' agreement.

San Francisco NAACP v. San Francisco Unified School District, 896 F.2d 412 (9th Cir. 1990), close scrutiny of these cases shows no inconsistency with the four corners rule for construing consent decrees followed by the Second Circuit.[8]

In fact, *Lorain* does more than merely fail to support petitioners' contentions -- it contradicts them by squarely recognizing that "the courts, in *effectuating* the purposes or accomplishing the goals of a decree, are *not* bound under all circumstances by the terms contained within the four corners of the parties' agreement." 979 F.2d at 1148 (emphasis added). *See also United States v. Knote*, 29 F.3d 1297, 1300 (8th Cir. 1994)(quoting *ITT*, 420 U.S. at 243) ("even when interpreting the meaning of a consent decree 'as written,' we are not to ignore the context in which the parties were operating, nor the circumstances surrounding the order"); *E.E.O.C. v. Local 580*, 925 F.2d 588, 593 (2d Cir. 1991) ("though a court cannot randomly expand or contract the

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[8] In *Lorain*, the decree actually contained an express provision limiting the state's financial obligations to $1 million, and so the Board of Education's attempt to increase the State's obligation to $9 million was held beyond the scope of the parties' agreement. Because the revision was contrary to the original provision governing the state's obligations, *Lorain* is clearly distinguishable from the case at hand.

In *Halderman*, the Third Circuit held that, under the contract theory of interpretation, termination of an express provision granting the court "active jurisdiction" over the settlement did not deprive the court of permanent jurisdiction to enforce the settlement under a different provision of the agreement. This case hardly advances petitioners' argument.

In contrast to the staffing provision in the present case, the terms of the reimbursement provision in *San Francisco NAACP* were expressly limited by a funding provision linked to the California Code. When new legislation in the Code reduced the state's financial obligations, the court bound the parties to this reduction according to the original terms of the provision under the four corners rule.

terms agreed upon in a consent decree, judicial discretion in flexing its supervisory and enforcement muscles is broad").

B. The Second Circuit Correctly Applied The Law On The Construction Of Consent Decrees

While the Consent Decree and Manuals expressly provided that the staff of DCF be increased through compliance with specific caseload ratios, the trial court's translation of this requirement into an exact mathematical figure with phased-in hiring dates not only falls within the four corners of the parties' agreement, but it represents the very heart of the agreement. Rather than imposing new terms, the subsequent order sought to achieve compliance with the exact same staffing requirements already agreed upon by the parties in the Decree and Manuals. The only qualitative difference between the initial staffing requirements and the subsequent order was to make explicit what was already implicitly necessary to place the State in full and timely compliance.[9] Only after petitioners admitted that they would not be in full compliance because of the funding cuts did the court undertake to impose orders to "effectuate the purposes" of the Decree. This fine tuning, in conformity with the nature of the requirements, was neither an enlargement of nor an addition to petitioners' obligations. Rather, it was an entirely proper construction of the state's basic obligation under the Consent Decree which merely reinforced the plain meaning of the parties' agreement.

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[9] For example, it takes about six months before a social worker can be hired and given the necessary training under the Decree to assume a caseload. App. 6a. Since the Department had already interviewed 100 persons who had been cleared for hiring, App. 2a, 3a, there was no undue burden placed on petitioners, and their alarmist arguments, Pet. Br. at 11, create a distortion of the record.

Upon determining that the staffing provisions were properly within the scope of the Consent Decree and that action to compel compliance was required, the court of appeals did not err in affirming the district court's findings. Not only was the district court exercising its affirmative duty to protect its decree pursuant to its broad equitable powers provided by the explicit provision granting it "continuing jurisdiction of this action to ensure compliance," Pet. App. 12-A,[10] but its orders were issued pursuant to a specific dispute resolution procedure explicitly contemplated in the Monitoring Order.

II. THERE IS NO CONFLICT AMONG THE CIRCUITS AS TO THE PROPER STANDARD FOR MODIFYING INSTITUTIONAL CONSENT DECREES

A. The Second Circuit's Decision Is Entirely Consistent With This Court's Ruling In *Rufo* And The Sixth Circuit's Decision In *Lorain*

To the extent that the district court's order is construed as a modification of the parties' agreement, petitioners contend that the Second Circuit's decision below conflicts with this Court's ruling in *Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367, and the Sixth Circuit's decision in *Lorain NAACP*, 979 F.2d 1141, by impermissibly applying the flexible modification standard to increase, rather than decrease, the state's burden.

As a preliminary matter, the modification standard articulated in *Rufo* is inapplicable to the present case. In *Rufo*,

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[10] *See also Brown v. Neeb*, 644 F.2d 551, 558 (6th Cir. 1981), concluding that the district court had broad authority to enter orders to achieve and ensure compliance under a similar provision.

modification was sought by the defendants. Here, if any modification has taken place, it is plaintiffs who are seeking revision of an institutional consent decree. The courts have recognized this distinction as a significant one and have approved modification requests made by plaintiffs "'if the original purposes of the injunction are not being fulfilled in any material respect'" (citation omitted), and "additional injunctive relief is necessary to advance those purposes." *United States v. Local 560 (I.B.T.)*, 974 F.2d 315, 331-32 (3d Cir. 1992). This rule, derived from this Court's decision in *United States v. United Shoe Machinery Co.*, 391 U.S. 244, 247-49 (1968), applies an even more relaxed standard than that announced in *Rufo*, because of the need for a district court, based upon *fact-specific* circumstances, to exercise its power "to prescribe other, and if necessary more definitive, means to achieve the [intended] result." 391 U.S. at 252. *See also Sizzler Family Steak Houses v. Western Sizzlin Steak House Inc.*, 793 F.2d 1529, 1539, *reh'g denied*, 797 F.2d 982 (11 Cir. 1986); *Exxon Corp. v. Texas Motor Exchange of Houston, Inc.*, 628 F.2d 500, 503 (5th Cir. 1980).

Alternatively, the Second Circuit correctly held that, even under the standard advanced by *Rufo*, modification was necessary to prevent detriment "to the public interest," because the funding cuts had frustrated the implementation of the staffing requirements.[11] Pet. App. 13-A.

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[11] The monitor's recommendation states, in relevant part:

> If the action of the General Assembly in refusing to fund these mandated staffing levels is allowed to stand unchallenged, the children whose constitutional and statutory rights have been violated in the past will face a further unexcusable delay in the remedy of this situation.

Pet. App. 32-A.

Nor does the Second Circuit's ruling conflict with *Lorain*. The Sixth Circuit had reversed the lower court's ruling because it had essentially ignored the original terms of the consent decree and substituted new, entirely different terms that bore no relationship to the original parties' intent. That court went on to warn that modification would be appropriate in circumstances similar to the present case "'if it furthers the original purpose of the decree in a more efficient way, without upsetting the basic agreement between the parties.'" 979 F.2d at 1149 (citation omitted).

B. There Is No Conflict Among The Circuits

The Second Circuit's decision is similarly reconcilable with applicable rulings by other courts of appeals. Those circuits that have addressed the issue of modification of institutional consent decrees subsequent to *Rufo* and *Lorain* have not limited the relaxed modification standard to revisions which seek only to ease the states' burden. In *Vanguards of Cleveland v. City of Cleveland*, 23 F.3d 1013 (6th Cir. 1994), the Sixth Circuit held that a significant public interest in fulfilling the goals of the consent decree constituted a change in circumstances warranting modification under *Rufo*. Similarly, the Third Circuit, in *Favia v. Indiana University of Pennsylvania*, 7 F.3d 332, 341 (3d Cir. 1993), held that a plaintiff may seek modification to increase the burden on the defendant under the relaxed standard pronounced in *Rufo*. *See also United States v. Western Electric Co., Inc.*, 46 F.3d 1198, 1202 (D.C.Cir. 1995)(stating that, under *United Shoe*, "[a]t the request of the party who sought the equitable relief, a court may tighten the decree in order to accomplish its intended result").[12]

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[12] Earlier decisions in the Ninth and Eleventh Circuits also contribute to the consensus that district courts have a flexible mandate to give effect

(continued...)

III. THIS IS NOT AN APPROPRIATE CASE FOR SUPREME COURT REVIEW

Petitioners claim that review is warranted to establish the governing rule as to the proper implementation of consent decrees. However, two factors substantially limit any future impact of this case.

First, the issue of enforcement or modification of consent decrees is an intensely fact-specific inquiry which must ultimately be determined on a case-by-case basis. The court orders from which petitioners seek *certiorari* were based on extensive knowledge by the Court Monitor and the district court of the complex procedural history of this case, the negotiations of the Consent Decree, Manuals, and Monitoring Order, the intricacies of the state budget process, the degree of urgency in regard to the need for additional staffing, and a thorough understanding of the timetables necessary to implement training and staffing patterns to reach the court-ordered mandates. Given that the Second Circuit's approval of the district court's orders relied heavily on unique factual circumstances, the decision in this case is not generally applicable to enforcement or modification of consent decrees in other institutional reform litigation and will provide very little precedential value.[13]

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[12] (...continued)
to the purposes of a consent decree. *See Thompson v. Enomoto*, 915 F. 2d 1383, 1388 (9th Cir. 1990), *cert. denied*, 502 U.S. 1071 (1992)("A district court has the power to modify a consent decree if experience with the administration of the decree shows the need for modification in order to accomplish the primary goals of the decree"); *Williams v. Butz*, 843 F.2d 1335, 1338 (11th Cir.), *cert. denied*, 488 U.S. 956 (1988) ("[T]he job of a district court . . . is to look at the particular facts and circumstances of the case to determine whether the modification satisfies the underlying purpose of the decree").

[13] It is precisely because of these factual complexities that deference to a (continued...)

Second, petitioners' argument that approval of broad equitable authority of a district court to enforce essential goals of an institutional consent decree will "discourage defendants from settling institutional reform litigation by consent decree," Pet. Br., p.16, ignores the unique procedural mechanisms set forth in the particular Monitoring Order of this case. Advance notice to petitioners of potential noncompliance and a dispute resolution process to resolve differences not only has the advantage of averting any immediate contempt findings against the petitioners but also avoids "lengthy and expensive formal judicial proceedings" and expedites relief to the plaintiff class. Pet. App. 19-A. *See also Rufo*, 502 U.S. at 382-83.

Indeed, the court of appeals acknowledged its appreciation of the "admirable cooperation of the parties and the careful, diligent work of the Court Monitor." Pet. App. 19-A. Consequently, petitioners' public policy argument is unsupported by the factual and procedural uniqueness of this case, and contrary to the very purposes underlying the Monitoring Order.

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[13] (...continued)
district court's discretion is heightened in cases involving institutional consent decrees. *Rufo*, 502 U.S. at 394 (O'Connor, J., concurring) ("heightened" deference to district court's exercise of discretion in overseeing a large public institution over a long period of time); *Hutto v. Finney*, 437 U.S. 678, 688 (1978)("special deference" given to trial judge's years of experience with the problems supervising prison reform consent decree); *Western Electric Co., Inc.*, 46 F.3d at 1205 (district court's twelve-year administration of decree was "entitled to a large measure of respect"); *Cooper v. Noble*, 33 F.3d 540, 543 (5th Cir. 1994) ("substantial deference" owed to magistrate judge's many years of experience supervising prison reform consent decree); *Wilder v. Bernstein*, 49 F.3d 69, 75 (2d Cir. 1995)(deference given to the trial judge's interpretation of the terms within the decree).

CONCLUSION

Accordingly, for all the foregoing reasons, petitioners' request for a writ of *certiorari* should be denied.

Respectfully submitted,

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